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13 GOOGLE LLC

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**

16 **SAN FRANCISCO**

17 ANIBAL RODRIGUEZ, *et al.* individually and  
18 on behalf of all other similarly situated,

19 Case No. 3:20-CV-04688 RS

20 Plaintiffs,

21 vs  
22 **DECLARATION OF EDUARDO E.**  
23 **SANTACANA IN SUPPORT OF**  
24 **PLAINTIFFS' ADMINISTRATIVE**  
25 **MOTION TO SEAL PORTIONS OF**  
26 **PLAINTIFFS' MOTION FOR RELIEF**  
27 **FROM CASE MANAGEMENT SCHEDULE**

28 GOOGLE LLC, *et al.*

Defendant.

29 [Declaration of Steve Ganem in Support of  
30 Plaintiffs' Administrative Motion to Seal filed  
31 concurrently herewith]

32 Judge: Hon. Richard Seeborg  
33 Courtroom: 3, 17th Floor  
34 Date: December 9, 2021  
35 Time: 1:30 p.m.

1 I, EDUARDO E. SANTACANA, declare:

2 1. I am an attorney licensed to practice law in the State of California and am a partner  
 3 with the law firm of Willkie Farr & Gallagher LLP, located at One Front Street, San Francisco,  
 4 California 94111, counsel for Defendant Google LLC (“Google”) in the above-captioned action.  
 5 Unless otherwise stated, the facts I set forth in this declaration are based on my personal  
 6 knowledge or knowledge I obtained through my review of corporate records or other  
 7 investigation. If called to testify as a witness, I could and would testify competently to such facts  
 8 under oath.

9 2. I submit this declaration in support of the Administrative Motion to Seal Portions of  
 10 Plaintiffs’ Motion for Relief from Case Management Schedule (“Motion to Seal”) filed by  
 11 Plaintiffs. ECF No. 152. I am making this declaration pursuant to Civil L.R. 79-5(f) as an  
 12 attorney for the “Designating Party,” as that term is used in that rule. Per the instructions provided  
 13 on the Northern District of California’s website, this declaration is drafted so that it does not  
 14 contain confidential information and does not need to be filed under seal. *See*  
 15 <http://www.cand.uscourts.gov/ecf/underseal>.

16 3. Steve Ganem, a Google Group Product Manager with supervisory authority  
 17 concerning Google Analytics for Firebase, has also reviewed the information Google seeks to  
 18 keep under seal and his declaration is submitted in support of the Motion to Seal, on behalf of the  
 19 Designating Party within the meaning of Civil L.R. 79-5. ***See Declaration of Steve Ganem in***  
 20 ***Support of Plaintiffs’ Motion to Seal filed concurrently herewith.***

21 4. On November 29, 2021, Plaintiffs filed their Motion to Seal, with certain  
 22 information conditionally under seal, including (1) portions of Plaintiffs’ Motion for Relief from  
 23 Case Management Schedule (“Motion for Relief”); (2) portions of the Declaration of Mark C.  
 24 Mao in Support of Plaintiffs’ Motion for Relief (“Mao Declaration”); and (3) Exhibits A–F to the  
 25 Mao Declaration. On that same day, I received unredacted service copies of each of these  
 26 documents. I have reviewed the documents Plaintiffs seek to file under seal pursuant to Civil  
 27 Local Rule 79-5, unredacted copies of which have been filed at ECF Nos. 152-4, 152-6, 152-8,  
 28

1 152-10, 152-12, 152-14, 152-16, 152-18, as well as the Civil Local Rules of this Court governing  
 2 such motions.

3 5. Plaintiffs' Motion to Seal seeks to redact and file under seal information that was  
 4 designated "Confidential" and "Highly Confidential – Attorneys' Eyes Only" by Google under the  
 5 parties' stipulated Protective Order.

6 6. Google seeks to seal the following information:

- 7 a. Motion for Relief – portions of lines 6:24-27, 15:16-17, 15:19-23 identified in  
 8 paragraphs 11, 13, 15–16 below
- 9 b. Mao Declaration – portions of 5:15 identified in paragraph 15 below
- 10 c. Exhibits A–F – entirety

11 7. Google has thus pared down Plaintiffs' proposed redactions and seeks to seal less  
 12 than seven lines of Plaintiffs' Motion for Relief, less than one line in the Mao Declaration, as well  
 13 as Exhibits A–F in their entirety. None of the redacted portions of Plaintiffs' Motion for Relief or  
 14 Mao Declaration that Google seeks to seal or the underlying exhibits would clarify the public's  
 15 understanding of the scheduling matter at issue before the Court. Indeed, the portions of the  
 16 Motion for Relief Google seeks to keep under seal concern discovery disputes: whether Google's  
 17 "productions support the need for more custodians" (Mot. for Relief at 6:19)—a dispute currently  
 18 pending before Magistrate Judge Tse (ECF No. 155); and whether Plaintiffs are entitled to  
 19 additional documents—a dispute Plaintiffs tacitly acknowledge should be decided by Judge Tse  
 20 whose "guidance" they may seek (Mot. for Relief at 15:2-3). All the exhibits Plaintiffs have filed  
 21 in support of those discovery arguments are likewise unnecessary to aid the public's  
 22 understanding of the scheduling issues.

23 8. In any case, because the Motion to Seal was filed in connection with a  
 24 non-dispositive motion concerning case deadlines, "the usual presumption of the public's right of  
 25 access is rebutted." *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).  
 26 Accordingly, the lower "good cause" standard applies to the material Google seeks to seal. *Id.* at  
 27 1179–80.

1       9.     Based on my review of the unredacted filings, there is good cause to protect all the  
 2 information Google seeks to seal.

3       10.   **Exhibit A** discloses Google's confidential and proprietary information concerning  
 4 the technical underpinnings of several of Google's products and settings, as well as the interaction  
 5 between them, that Google maintains as confidential in the ordinary course of its business and is  
 6 not generally known to the public or Google's competitors. Such highly confidential information  
 7 reveals Google's internal strategy, product design, and products' abilities, and falls within the  
 8 protected scope of the Protective Order entered in this action. *See* ECF No. 70. Public disclosure  
 9 of such highly confidential information could detrimentally affect Google's competitive standing  
 10 as competitors may alter their product or system designs and practices relating to competing  
 11 products. Exhibit A also relates exclusively to an issue unrelated to the allegations in this case:  
 12 namely, an article discussing whether users were confused about the saving of their location  
 13 information to WAA when WAA was turned *on*. Apart from relating to a different complaint  
 14 about the same product, Exhibit A has no relevance in this case.

15     11.   **Exhibit B** discloses Google's confidential and proprietary information concerning  
 16 Google's internal technological systems and processes used to store data Google receives via its  
 17 products. Specifically, Exhibit B discloses Google's process for maintaining and sorting data  
 18 from app events collected by GA for Firebase. Google considers this information proprietary,  
 19 maintains it as confidential in the ordinary course of its business and it is not generally known to  
 20 the public or Google's competitors. Such highly confidential information reveals Google's  
 21 internal strategy, system design, and system abilities, and falls within the protected scope of the  
 22 Protective Order entered in this action. *See* ECF No. 70. Public disclosure of such highly  
 23 confidential information could detrimentally affect Google's competitive standing as competitors  
 24 may alter their product or system designs and practices relating to products that compete with GA  
 25 for Firebase. **Page 6, lines 24-25 of Plaintiffs' Motion for Relief**, at "REDACTED" ("... raise  
 26 concerns about the" [REDACTED] *Id.* ¶ 12, Ex. B . . .), comprises quotes from and  
 27 characterization of Exhibit B, and disclosure thus prejudices Google for the same reasons.

1       12. **Exhibits C & D**, which are part of the same email thread, disclose Google's internal  
 2 technological systems and processes governing the data Google receives via its products and  
 3 Google's storage of such data. Exhibits C & D also disclose the relationship between several  
 4 products and processes and other proprietary Google functions. Google maintains this  
 5 information as confidential in the ordinary course of its business and it is not generally known to  
 6 the public or Google's competitors. Such highly confidential information reveals Google's  
 7 internal strategy, product and system design, and products' and systems' abilities, and falls within  
 8 the protected scope of the Protective Order entered in this action. *See ECF No. 70.* Public  
 9 disclosure of such highly confidential information could detrimentally affect Google's competitive  
 10 standing as competitors may alter their product designs.

11       13. **Exhibit E** discloses Google's confidential and proprietary information concerning  
 12 the technical design of Google's analytics, advertising, and other products, as well as Google's  
 13 strategy and consideration of risks for specific products. Google considers this information  
 14 proprietary, maintains it as confidential in the ordinary course of its business and it is not  
 15 generally known to the public or Google's competitors. Such highly confidential information  
 16 reveals Google's internal strategy, product and system design and abilities, and falls within the  
 17 protected scope of the Protective Order entered in this action. *See ECF No. 70.* Public disclosure  
 18 of such highly confidential information could detrimentally affect Google's competitive standing  
 19 as competitors may alter their product or system designs and practices. **Page 6, lines 26-27 of**  
 20 **Plaintiffs' Motion for Relief**, quotes from Exhibit E, and disclosure thus prejudices Google for  
 21 the same reasons.

22       14. **Exhibit F** is an internal performance review of a Google product manager (PM) that  
 23 compiles confidential and proprietary technical, business, and personal information concerning  
 24 Google projects and work spanning several years. This exhibit discloses highly confidential,  
 25 proprietary information about the technology underlying the product managed by the PM, as well  
 26 as about the technology of many related products, functions, and services, including Google's  
 27 technological systems and processes used to store data Google receives via its products. The  
 28 information contained therein thus falls within the protected scope of the Protective Order entered

1 in this action. *See* ECF No. 70. Exhibit F also reveals proprietary information concerning  
 2 Google's product design strategy, business strategy, and its consideration of various risks. Public  
 3 disclosure of such highly confidential information could detrimentally affect Google's competitive  
 4 standing as competitors may alter their product or system designs and practices. In addition,  
 5 Exhibit F reveals internal project names Google does not use publicly, as well as the technical and  
 6 strategic details of such projects which Google likewise does not reveal publicly. Revealing  
 7 internal project names and details would cause significant risk to Google, including cyber security  
 8 risk. For example, an individual interested in improperly accessing Google's systems could target  
 9 particular proprietary documents and information for improper uses if he or she knew Google's  
 10 confidential internal names, like this one. Exhibit F also discloses Google's confidential business  
 11 strategy and approach to internal employee review and promotion. And Exhibit F reveals  
 12 confidential personal information about the Google PM's job performance, including private  
 13 discussion of areas for improvement and advancement potential. Google considers all of this  
 14 information proprietary and/or highly confidential, and it maintains the information as confidential  
 15 in the ordinary course of its business.

16       **15. Page 15, lines 16-17 of Plaintiffs' Motion for Relief and Paragraph 20 of the**  
 17 **Mao Declaration, at page 5, line 15**, at "REDACTED" ("... project known as [REDACTED]  
 18 was designed to allow Google to [REDACTED]—the very thing . . ."), and **Page 15, line 19 of**  
 19 **Plaintiffs' Motion for Relief**, at "REDACTED" ("... was rolling out [REDACTED"]"), discloses  
 20 the confidential internal name and details of an internal Google project discussed in Exhibit F.  
 21 Google does not discuss the project or use the project name publicly, and revealing the internal  
 22 project name or technical function would present a serious risk of irreparable harm to Google for  
 23 the reasons stated in paragraph 14 above.

24       **16. Page 15, lines 20-23 of Plaintiffs' Motion for Relief**, at "REDACTED" ("Google  
 25 released [REDACTED] *Id.* After that point, Google apparently [REDACTED] *Id.*"), discloses the  
 26 confidential internal name and proprietary details of a different internal Google project discussed  
 27 in Exhibit F. Google does not discuss this project or use the project name publicly, and revealing  
 28

1 the internal project name or its technical details would present a serious risk of irreparable harm to  
 2 Google for the reasons stated in paragraph 14 above.

3 17. Courts have repeatedly found it appropriate to seal documents that contain “business  
 4 information that might harm a litigant’s competitive standing, *Nixon v. Warner Commc’ns, Inc.*,  
 5 435 U.S. 589, 589-99 (1978), or any other “commercially sensitive information,” *Palantir Techs.  
 6 Inc. v. Abramowitz*, No. 19-CV-06879-BLF, 2021 WL 1925459, at \*2 (N.D. Cal. Mar. 5, 2021).  
 7 Good cause to seal is shown when a party seeks to seal materials that “contain[] confidential  
 8 information about the operation of [the party’s] products and that public disclosure could harm  
 9 [the party] by disclosing confidential technical information.” *Digital Reg. of Texas, LLC v. Adobe  
 10 Sys., Inc.*, No. C 12-1971 CW, 2014 WL 6986068, at \*1 (N.D. Cal. Dec. 10, 2014). Courts in this  
 11 district have also determined that motions to seal may be granted as to confidential business  
 12 information that provides an “opportunity to obtain an advantage over competitors who do not  
 13 know or use it” because such information can be a trade secret. *See, e.g., In re Elec. Arts, Inc.*,  
 14 298 F. App’x 568, 569 (9th Cir. 2008) (sealing exhibit containing trade secrets and adopting  
 15 definition of trade secret as “any formula, pattern, device or compilation of information which is  
 16 used in one’s business, and which gives him an opportunity to obtain an advantage over  
 17 competitors who do not know or use it”); *see, e.g., United Tactical Sys., LLC v. Real Action  
 18 Paintball, Inc.*, 2015 WL 295584, at \*3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against  
 19 sealing “that [the party] ha[s] not shown that the substance of the information . . . amounts to a  
 20 trade secret”).

21 18. Public disclosure of the information Google seeks to keep under seal would harm  
 22 Google’s competitive standing it has earned through years of innovation and careful deliberation,  
 23 by revealing sensitive aspects of Google’s proprietary systems, strategies, and designs to Google’s  
 24 competitors. That alone is a proper basis to seal such information. *See, e.g., Free Range Content,  
 25 Inc. v. Google Inc.*, No. 14-cv-02329-BLF, ECF No. 192, at 6–8 (N.D. Cal. May 3, 2017)  
 26 (granting Google’s motion to seal certain sensitive business information).

27 19. Moreover, if publicly disclosed, malicious actors may use such information to seek  
 28 to compromise Google’s internal systems and operations. Google would be placed at an increased

risk of cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, No. 13-md-02430-LHK, 2013 WL 5366963, at \*3 (N.D. Cal. Sept. 25, 2013) (sealing material that “if made public Google contends could lead to a breach in the security” of Google’s systems). The security threat is an additional reason for this Court to seal the identified information.

20. Additionally, courts do not hesitate to protect both confidential employee information as well as a company’s business strategy disclosed by performance reviews. *See, e.g.*, *Dynetix Design Sols. Inc. v. Synopsys Inc.*, No. C 11-CV-05973 PSG, 2013 WL 2285210, at \*1 (N.D. Cal. May 23, 2013) (request to seal “personal performance review” is granted because it “contains sensitive personal information”); *Moussouris v. Microsoft Corp.*, No. 15-CV-1483 JLR, 2018 WL 2124162, at \*2 (W.D. Wash. Apr. 25, 2018), *report and recomm. adopted*, 2018 WL 2124084 (May 8, 2018) (“allocation of ratings during performance reviews” reflects “confidential business strategy” warranting sealing). The confidential personal information and business strategy disclosed in Exhibit F is another reason to warrant sealing.

21. Google has narrowly tailored its request to seal only extraneous, confidential, proprietary material that is not necessary to aid the public’s understanding of the content at issue in Plaintiffs’ request for relief from the case schedule. Google has pared down Plaintiffs’ proposed redactions in the Motion for Relief and Mao Declaration such that they are limited in scope and volume. And there is no public need to review the exhibits to the Motion for Relief to understand the scheduling issues before the Court. Because Google’s request to seal is narrowly tailored and limited to documents or portions thereof that reveal Google’s highly-confidential or confidential information that is not generally known to the public or Google’s competitors, Google respectfully requests that the Court order portions of the Motion for Relief and Mao Declaration discussed above and Exhibits A–F be filed under seal.

Executed November 5, 2021, at San Francisco, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ *Eduardo E. Santacana*  
EDUARDO E. SANTACANA